

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

ROBERT MOORE
Plaintiff,

v.

**U.S. IMMIGRATION AND CUSTOMS
ENFORCEMENT; U.S. CUSTOMS AND
BORDER PROTECTION; AND
U.S. DEPARTMENT OF HEALTH
AND HUMAN SERVICES,
Defendants.**

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EP-19-CV-00279-DCG

**DEFENDANTS' STATUS REPORT AND UNOPPOSED MOTION FOR STAY
DEADLINE FOR DEFENDANTS' TO RESPOND TO PLAINTIFF'S MOTION FOR
JUDGMENT ON THE PLEADINGS**

COME NOW, Defendants, United States Immigration and Customs Enforcement ("ICE"), United States Customs and Border Protection ("CBP"), and United States Department of Health and Human Services ("HHS") (collectively referred hereinafter as "Defendants"), and respectfully file this Status Report and Unopposed Motion to Stay Deadline for Defendants' Response to Plaintiff's Motion for Judgment on the Pleadings, in the above-entitled and numbered cause and would respectfully show the Court the following:

I. PROCEDURAL BACKGROUND

1. On October 1, 2019, Plaintiff filed a Complaint for Declaratory and Injunctive Relief. ECF No. 1.
2. Defendants filed their Answer on November 6, 2019. ECF No. 15.
3. On December 18, 2019, Plaintiff filed a Motion for Judgment on the Pleadings ("Plaintiff's Motion"). ECF No. 26. Defendants' deadline to respond to Plaintiff's Motion was January 2, 2019.

4. On December 27, 2019, Defendants filed their first Unopposed Motion for Extension of Time citing the need for additional time for defense counsel to consult with all appropriate personnel at each respective Defendant agency. ECF No. 27.

5. On December 30, 2019, the Court entered its Text Order Granting Unopposed Motion for Extension of Time. Text Order dated December 30, 2019. Defendants' response to Plaintiff's Motion was then due January 9, 2020.

6. On January 9, 2020, Defendants filed Defendants' Second Unopposed Motion for Extension of Time. ECF No. 28. Defendants advise the Court that counsel for the parties were attempting to negotiate an agreeable schedule for production of responsive documents from each Defendant agency. *Id.* A production schedule agreed to by the parties will likely resolve many of the issues in dispute in the instant matter, thereby preserving the unnecessary expenditure of judicial resources. *Id.*

7. On January 10, 2020, the Court entered its Text Order Granting Motion for Extension of Time. Text Order dated January 10, 2019. Defendants' response to Plaintiff's Motion is now due January 17, 2020.

II. STATUS REPORT

A. Status of Processing and Disclosure of Records.

Between June 2018 and March 2019, Plaintiff submitted five Freedom of Information Act ("FOIA") requests for records with ICE, CBP and HHS. *See* ECF Nos. 1, ¶ 2, and 15, ¶ 2. ICE, CBP and HHS all admit that as of October 1, 2019, the date Plaintiff filed the instant suit, they had not produced any responsive records to Plaintiff's request. ECF No. 15 at ¶ 5.

Since the initiation of the instant suit, HHS completed an initial search and provided seven responsive documents. Counsel for the parties thereafter conferred regarding a search parameters for a second search of responsive records. HHS is conducting a second search.

ICE has completed its search and identified 236 pages of potentially responsive documents. Of those records, 96 pages were deemed responsive and forwarded to Plaintiff's counsel on January 15, 2020. ICE has identified an additional 771 pages of potentially responsive documents. These documents are being reviewed by ICE FOIA office.

CBP initially deemed Plaintiff's requests overly broad. CBP is however conducting a search on Plaintiff's request number CBP-OFO-2019-010211. Counsel for the parties are conferring on narrowing the search parameters for Plaintiff's request number CBP-2018-064544. CBP has neither identified nor provided Plaintiff with any documents responsive to either of his two requests.

B. Proposed Production Schedule.

CBP and HHS are each currently conducting searches for potentially responsive records. Because the searches by CBP and HHS are incomplete, the parties currently lack sufficient knowledge of the volume of records to be reviewed and processed. Lacking knowledge in the number of potentially responsive records, CBP and HHS are currently unable to estimate how long it will take for their respective FOIA offices to review and release any responsive records.

The parties jointly and respectively propose taking time to allow each defendant to complete their searches or processing of any responsive records, and to allow counsel for the parties to confer in good faith in an effort to narrow any issues of disagreement. Allowing the case to proceed in this manner will reduce the expenses to all parties and conserve the resources of both parties and the Court.

Accordingly, the parties respectfully and jointly propose the following schedule:

Date for Defendants to complete their searches:	February 7, 2020 ¹
Counsel for the parties to confer relating to search results:	February 14, 2020
Date for First Release of Records:	March 30, 2020
Rolling production: (If agreed to by the parties or good cause shown to the Court))	Every 30 days after March 30, 2020
Next Status Report:	February 24, 2020
Additional Status Reports during production:	April 3, 2020, then every 30 days thereafter

In the interim, if any issues about Defendants' searches or processing arise, counsel for the parties will first confer and attempt to resolve those issues. If any issues remain that any party wishes to bring to the Court's attention, Defendants will include such information in the status reports, or alternatively, either party may file notice with the Court. Additionally, counsel for the parties will confer regarding any issues regarding withholdings to determine whether they may be able to resolve or narrow the areas of disagreement. Rolling production is permitted if agreed to by the parties or good cause shown to the Court.

**UNOPPOSED MOTION TO STAY DEADLINE FOR DEFENDANTS' TO RESPOND TO
PLAINTIFF'S MOTION FOR JUDGMENT ON THE PLEADINGS**

The FOIA includes a "safety valve" to provide an agency additional time to process a plaintiff's FOIA request while the court retains jurisdiction over the action. *See* 5 U.S.C. § 552(a)(6)(C). Courts have frequently issued orders extending the time to respond to FOIA

¹ The search for Plaintiff's request number CBP-2018-064544 will be completed as soon as practical. This search first requires a sub-search to be completed by another section within CBP. It is unknown when the sub-search will be completed, but it shall be completed as soon as possible.

requests, including orders granting stays of several years in length or otherwise permitting agencies several years to process documents under exceptional circumstances. *See, e.g., Piper v. U.S. Dep't of Justice*, 339 F. Supp. 2d 13, 16 (D.D.C. 2004) (FBI showed need for stay of two years); *Williams v. F.B.I.*, CIV.A. 99-3378 AK, 2000 WL 1763680, at *3 (D.D.C. Nov. 30, 2000) (stay of approximately one and a half years); *Nat'l Sec. Archive v. U.S. S.E.C.*, 770 F. Supp. 2d 6, 9 (D.D.C. 2011) (granting one-year stay).

In the instant case, the parties have negotiated the proposed production schedule outlined above. Defendants move to stay their deadline to file their response to Plaintiff's Motion for Judgment on the Pleadings, in order to allow Defendants to complete their respective searches, review and release any records responsive to Plaintiff's FOIA requests. Defendants seek to file status reports with the Court in accordance to the proposed production schedule outlined by the parties.

The undersigned conferred with Plaintiff's counsel and he indicated he is unopposed to the relief requested.

WHEREFORE, PREMISES CONSIDERED, Defendant respectfully prays that this Motion to Stay Defendants' deadline to respond to Plaintiff's Motion for Judgment on the Pleadings be in all things granted, and that the Court approve the proposed production schedule respectfully submitted by the parties, and pray for such other and further relief to which the Defendants may show themselves to be justly entitle.

Respectfully submitted,

JOHN F. BASH
UNITED STATES ATTORNEY

/s/ Manuel Romero

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Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of January, 2020, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following CM/ECF participants: Lynn Coyle and Christopher Benoit, *Attorneys for Plaintiff*.

/s/ Manuel Romero

MANUEL ROMERO

Assistant United States Attorney

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ORDER

The Court, having considered Defendants' Unopposed Motion for Stay Deadline for Defendants' to Respond to Plaintiff's Motion for Judgment on the Pleadings, in the above-entitled and numbered cause, is of the opinion that said motion should be, and is hereby **GRANTED**.

THEREFORE, IT IS ORDERED that Defendants' deadline to respond to Plaintiff's Motion for Judgment on the Pleadings is hereby stayed until further order of the Court.

IT IS FURTHER ORDERED that the Court accepts the production schedule presented by the parties and that Defendants status report relating to production are due February 24, 2020, April 3, 2020, and every 30 days thereafter. Additionally:

Date Defendants are to complete their searches:	February 7, 2020 ¹
Counsel for the parties to confer relating to search results:	February 14, 2020
Date for First Release of Records:	March 30, 2020
Rolling production: (If necessary, and after conference by counsel)	Every 30 days after March 30, 2020

¹ The search for Plaintiff's request number CBP-2018-064544 shall be completed as soon as practical.

SIGNED this _____ day of _____, 2020.

DAVID C. GUADERRAMA
UNITED STATES DISTRICT JUDGE